

**\*\*NOT FOR PRINTED PUBLICATION\*\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

## AFFINITY LABS OF TEXAS, LLC,

§ § § § § § § § § § § §

*Plaintiff,*

CIVIL ACTION No. 9:08CV164

V.

BMW NORTH AMERICA, LLC, ET AL.,

JUDGE RON CLARK

*Defendants.*

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## **ORDER MODIFYING SCHEDULING ORDER**

The court recently granted Plaintiff's motion to amend its complaint to add U.S. Patent No. 7,634,228 ("the '228 patent") to this suit. [See Doc. #306; Dec. 14, 2009 Oral Order.] Therefore, the court issues this order modifying its previous Scheduling Order [Doc. #195] in order to accommodate the addition of the new patent. It is **ORDERED** that the Scheduling Order shall be modified as follows:

December 24, 2009

P.R. 3-1 Disclosure of Asserted Claims and Infringement Contentions (and P.R. 3-2 document production) to be served. Plaintiff shall select no more than six representative claims across both patents-in-suit.

February 8, 2010

Defendants to submit a list of any terms in the '228 patent proposed for construction.

February 12, 2010

Parties to submit joint statement containing the anticipated length of time necessary for the Claim Construction Hearing for the ‘228 patent and an estimate of how many pages are needed to brief the disputed claims.

March 5, 2010	P.R. 3-3 Invalidity Contentions (and P.R. 3-4 document production) to be served.
March 12, 2010	Defendants to file opening claim construction brief regarding disputed terms in the ‘228 patent.
March 22, 2010	Plaintiff to file responsive claim construction brief regarding claim construction for the ‘228 patent.
March 29, 2010	Parties to file joint claim construction chart ( <i>see</i> P.R. 4-5(d)). Parties shall work together to agree on as many claim terms as possible.
April 1, 2010	<b>Claim Construction Hearing for the ‘228 patent at 10:00 a.m. in Beaumont.</b>
April 9, 2010	Comply with P.R. 3-7 (Designation of Willfulness Opinions) for ‘228 patent.
	Provide Initial Mandatory Disclosures regarding the ‘228 patent, if there are any disclosures in addition to the parties’ Initial Mandatory Disclosures regarding U.S. Patent No. 7,324,833 filed on December 3, 2009. Initial Mandatory Disclosures shall be of information directed solely to damages, and of all persons, documents, data compilations and tangible things, which are relevant to a claim or defense of any party and which have not been previously disclosed. This deadline is not an extension of earlier deadlines set out in this court’s order, nor an excuse to delay disclosure of information. It is a “catchall” deadline for provision of all remaining information which may be relevant to a claim or defense of any party at trial.
	Deadline to amend pleadings. It is not necessary to file a motion for leave to amend before the deadline to amend pleadings, except to the extent the amendment seeks to add a new patent-in-suit.
May 24, 2010 [prior: January 8, 2010]	Fact discovery deadline. All fact discovery must be served in time to be completed by this date.

May 14, 2010 [prior: January 22, 2010]	Parties with burden of proof to designate Expert Witnesses other than claim construction experts and provide their expert witness reports, to include for ALL experts all information set out in Rule 26(2)(B).
May 28, 2010 [prior: February 5, 2010]	Parties to designate Expert Witnesses on issues for which the parties do not bear the burden of proof, and provide their expert witness reports, to include for ALL experts all information set out in Rule 26(2)(B).
June 14, 2010 [prior: March 12, 2010]	Expert discovery deadline. All expert discovery must be served in time to be completed by this date. <b>Note: Objections to any expert, including Daubert motions, shall be filed within four weeks after the expert's Report has been disclosed. Such objections and motions are limited to ten pages each.</b>
June 28, 2010 [prior: April 30, 2010]	File Dispositive Motions and any other motions that may require a hearing. Regardless of how many dispositive motions a party files, each party is limited to a total of sixty pages for such motions. Each individual motion shall comply with Local Rule CV-7. Responses to motions shall be due in accordance with Local Rule CV-7(e).

Trial-specific dates, beginning with the September 10, 2010 deadline for notice of intent to offer certified records, remain unchanged.

So ORDERED and SIGNED this 20 day of December, 2009.



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Ron Clark, United States District Judge